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10/711,553	09/24/2004	Jeanne Guerin	04-0304	5552
64722	7590	12/04/2006	EXAMINER	
OSTRAGER CHONG FLAHERTY & BROITMAN, P.C.			MAHONE, KRISTIE ANNETTE	
250 PARK AVENUE			ART UNIT	PAPER NUMBER
SUITE 825				
NEW YORK, NY 10177-0899			3751	

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Office Action Summary	Application No.	Applicant(s)
	10/711,553	GUERIN ET AL.
	Examiner	Art Unit
	Kristie A. Mahone	3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

1) Responsive to communication(s) filed on 24 September 2004.

2a) This action is FINAL.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

4) Claim(s) 1-40 is/are pending in the application.

4a) Of the above claim(s) 1-21 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 22-40 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 24 September 2004 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/14/2006.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

**DETAILED ACTION**

1. The claims are objected to because an unnumbered claim appears between claim 5 and claim 6. Consecutive numbering of the claims is required. For the purposes of examination, the unnumbered claim is designated as "Claim 6." Claim 6 has been renumbered as "Claim 7," and subsequent claims have been numbered consecutively beginning with number 8.

***Election/Restrictions***

2. This application contains claims directed to the following patentably distinct species: Species I (as depicted in Figures 1-3); Species II (as depicted in Figures 4A-4B); Species III (as depicted in Figure 5); and Species IV (as depicted in Figure 6).

3. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, none of the claims are held to be generic.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

4. During a telephone conversation with Joshua Broitman on November 15, 2006, a provisional election was made without traverse to prosecute the invention of Species I, claims 22-40 (as re-numbered by Examiner). Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-21 (as renumbered by Examiner) are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

#### ***Specification***

5. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required. Claims 32 and 37 recite a disposable or removable enclosure liner, which is not mentioned in the disclosure. The "user adjustable nozzles," recited in claim 37 are also not mentioned in the specification.

#### ***Drawings***

6. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the enclosure liner (claims 32,38); electrostatic collectors (claims 33,39); hand-held nozzle (claims 35,39), user adjustable nozzles (claim 37), must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

7. The drawings are objected to under 37 CFR 1.83(a) because they fail to show the handle held nozzle for spraying (Para 35), electrostatic collectors (Para 43), removable

basin (Para 45), and timer 74 (Para 55) as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d).

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 33 and 39 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention without undue experimentation.

After a review of Paragraph 43 of the disclosure, the Examiner is unable to understand how the electrostatic collectors collect the ionized misted substance and direct it toward the user, especially since the surfaces of the enclosure are moist.

11. Claims 24, 32, 33, 38, and 39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

12. Claims 24, 33, and 39 recite the limitation "said misted substance." Such recitation renders the claim claims indefinite since there is insufficient antecedent basis for this limitation in the claim; i.e. independent claims 22 and 38 do not positively recite a misted substance.

13. Claims 32 and 38 are vague and indefinite because a disposable or removable enclosure liner is not disclosed in the instant disclosure. The Examiner is unable to ascertain the metes and bounds of the claims.

***Claim Rejections - 35 USC § 102***

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

15. Claims 22-33,35, and 37-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Guerin et al (US 2005/0210576).

The applied reference has a common inventors and assignees with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention “by another,” or by an appropriate showing under 37 CFR 1.131.

Regarding claims 22 and 31, the Guerin reference discloses a misting system (10) for misting a user (43) comprising and enclosure (12) defining a receiving area (41) for a user. As shown in Figure 4, Guerin’s enclosure has an external surface (26) with a condensing surface (66); and an internal surface (42) defining a drain opening (36 feeding 32) capable of receiving misted air during a drying cycle. (Fig 3-4; See generally Paras 0035-0039). The system also includes a plurality of mist dispensers (48) capable of dispensing a misted substance. (Figure 2, Para 0025). The control device (20) is capable of activating an air flow system such that the mist exits through

the drain opening during a drying cycle, condensing on the condensing surfaces (Paras 0033, 0042).

Regarding claim 23, as noted in Para 0023, Guerin's internal surface comprises a mist repellent material.

Regarding claim 24, Guerin 's misted substance may be water. (Para 0041).

Regarding claim 25, the enclosure may be cylindrical, cubical, conical, or irregular in shape. (Para 0019).

Regarding claims 26-28, and 30 as schematically shown in Figure 2, Guerin's system includes a substance input tank (70), an input display (18), height sensors ( 56); and distance sensors (62). With respect to claim 27, Examiner notes that mist dispensers (48) are configured to receive water as a function of the users height, which may be entered at display 18. (Para 0027).

Regarding claim 29, controller 20 is capable of receiving signals from height sensors (56), temperature sensors (58) and distance sensors (62) and adjusting the plurality of mist dispensers as a function thereof. (Paras 0027-0030).

Regarding claim 32, as noted above applicant has failed to provide adequate support in the specification for the claim terminology. Applying the art as presently understood , the enclosure 12 is comprised of multiple surfaces (Figure 2: e.g. 26,66, etc). The most inner surface, 24, is understood as the claimed liner. Furthermore, because surface 24 is installable, it is inherently removable as claimed.

Regarding claim 35, referring to Figure 2, Guerin's system includes a "hand-held nozzle" (row 53). The nozzles in row 53 are understood as "hand-held" nozzles as they

are capable of being grasped by the user. Furthermore, nozzles 53 are configured to spray the user's upper body, which is not covered by mist dispensers 48.

Regarding claim 37, Guerin's nozzles (48, 50, 52 and/or 53) are understood to be "user adjustable" since they are activated based upon the user's height, and applicant has not clearly specified what structure constitutes the recited "user adjustable nozzle." (Paras 0027-0028).

Claim 38 recites limitations substantially similar to the limitations recited in claims 22, 32, and 35 which have been rejected as discussed supra.

### ***Claim Rejections - 35 USC § 103***

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 34 and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Guerin as discussed above. The Guerin reference does not expressly disclose a "mount" coupling the enclosure to a vehicle. Instead, Guerin explains at Para 0016 that the disclosed system may be incorporated in various vehicles. Although a specific mounting structure is not located in the Guerin reference, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a mounting structure to prevent the enclosure from shifting when the vehicle moves.

18. Claim 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Guerin (as discussed above) in view of Cima (4,424,598). Guerin differs in that it does not

specifically disclose the power source which is used to power the controller as claimed. Attention, however, is directed to the Cima reference which discloses another mist delivery system with an electro-pneumatic controller (104) [which is powered by a pneumatic (air/gas) source]. (Figure 7). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the Guerin system by employing a pneumatic (gas/air) controller, as taught by Cima. Such a modification would be considered a mere choice of preferred power source for a controller on the basis of its suitability for intended use.

19. Claims 33 and 39, as best understood without proper support, are rejected under 35 U.S.C. 103(a) as being unpatentable over Guerin (as discussed above) in view of Rehman et al (5,938,126). Guerin discloses a misting nozzle having substantially all of the features as claimed, except an ionized misted substance and electrostatic collector as claimed. However, the Rehman reference teaches another misting nozzle (13), which delivers a mist containing ions produced by electrodes. (Col. 3, lines 2-18;41-43). Examiner notes that since the ions are produced by electrodes, the ions inherently have electrostatic properties. Rehman further teaches an ion collector for directing the misted fluid to an applied surface. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to have modified the Guerin system by employing an ionized mist substance and electrostatic collector, as taught by Rehman, to direct the misted substance to a coating surface.

***Conclusion***

20. The following prior art is made of record and is considered pertinent to applicant's disclosure: Grenier (5,216,763); Brunelle (7,013,504) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie A. Mahone whose telephone number is (571) 272-3680. The examiner can normally be reached on Monday -Friday 8:30A.M-5 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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